Paglinawan et al v. Frey et al
Doc. 5 Att. 7

06-CV-00099-MISC

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Attorneys For Defendant
Random House, Inc.

FILED

2006 FEB 21 PM 12:54

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CV 06-01029 RSWL JTLx

SARA RUBENSTEIN, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. JAMES FREY, RANDOM HOUSE, INC. and Does 1-300, Defendants.	Case No. **NOTICE OF REMOVAL**

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332 and 1446, as amended in relevant part by the Class Action Fairness Act of 2005, defendant Random House, Inc. ("Random House" or "Defendant"), hereby removes to this Court the above-styled action, pending as Case No. BC345856 in the Superior Court of the State of California for the County of Los Angeles. As grounds for removal, Defendant states as follows:

Factual Background

1. On January 12, 2006, Plaintiff Sara Rubenstein filed the State Court Action in the Superior Court of the State of California for the County of Los Angeles.

2. Defendant was served with a summons and complaint ("Cmplt.) on February 6, 2006.

3. The complaint arises out of the publishing and marketing of the book "A Million Little Pieces" (the "Book") written by defendant James Frey. (Cmplt ¶ 32).

4. Plaintiff's complaint contains three counts, which seek relief against defendants for alleged violations of the Unfair Competition Law (Count I), Consumer Legal Remedies Act (Count II), and the False Advertising Statute (Count III).

5. Plaintiff is a citizen of the State of California. (Cmplt. ¶ 13).

6. Defendant Random House is a corporation organized and existing under the laws of the State of New York, with its principal place of business in New York, New York, and thus is a citizen of New York for these purposes.

7. Defendant Frey is a resident of the State of New York.

8. Plaintiff seeks to pursue her claims on behalf of a class of California residents who purchased the Book "from its publication in 2003 to January 10, 2006." (Cmplt. ¶¶ 23, 14).

Federal Jurisdiction under the Class Action Fairness Act

9. Application of CAFA. The Court has original jurisdiction of this case pursuant to the Class Action Fairness Act of 2005 ("CAFA" or "the Act"). CAFA creates federal jurisdiction over lawsuits in which "the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs, and is a class action in which . . . any member of a class of plaintiffs is a citizen of a State different from any defendant," and the number of members of all proposed plaintiff classes exceeds 100. 28 U.S.C. § 1332(d)(2)(A) and (d)(5)[1]. As explained below, each of these criteria are met here.

10. Amount in Controversy. The aggregate amount in controversy in this case exceeds $5,000,000, exclusive of interest and costs. Plaintiff seeks to recover under California's Unfair Competition Law, California's Consumer Legal Remedies Act, and California's False Advertising Statute for defendants' alleged "scheme to deceive and defraud customers. " (Cmplt. ¶ 10).[2] In addition to injunctive relief seeking to have defendants "enjoined from engaging in unfair and/or deceptive acts or practices" and ordering defendants to "publish notice of the truth regarding the Book," Plaintiff also demands "all payments for the Book be returned to Plaintiffs and the members of the class." (Cmplt. pp. 13). Based on estimates of sales of the Book in California, the amount in controversy in this action exceeds the $5,000,000 threshold. (Declaration of Donald Weisberg, Exhibit A hereto, at ¶ 6.) The Book was sold in both a hardcover edition (with a suggested retail price of $22.95) and a paperback edition (with a suggested retail price of $14.95). *Id.* at ¶ 4. More than an estimated 26,000 hardback copies of the Book were sold to consumers in California. *Id.* at ¶ 5.

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[1] CAFA applies to any action commencing on or after February 18, 2005 – the date when CAFA was enacted. *See* CAFA § 9 ("The amendments made by this Act shall apply to any civil action commended on or after the date of enactment of this Act.")

[2] Defendant denies that Plaintiff has stated a claim or that certification of a statewide or nationwide class would be appropriate. Defendant further denies that plaintiff or any putative class member is entitled to any relief whatsoever.

More than an estimated 350,000 paperback copies were sold to consumers in California. *Id.* These figures suggest that in excess of $5,000,000 is at issue in this case.

11. Citizenship of the Parties. There is diversity of citizenship between a member of Plaintiff's putative class and defendant Random House:

a. Plaintiff and the alleged putative class members are citizens of California.

b. Defendant Random House is a New York corporation with its principal place of business in New York, New York, and thus is a citizen of New York for these purposes.

c. Defendant Frey is a resident of the State of New York.

d. Accordingly, this action is a class action where "any member of a class of plaintiffs is a citizen of a State different from any defendant." 28 U.S.C. § 1332(d)(2)(A).

12. Number of Class Members. As the above figures indicate, there are more than 100 class members.

13. Mandatory Jurisdiction. Federal jurisdiction over this action is mandatory, not permissive. CAFA classifies qualifying class actions (i.e., ones in which the $5 million amount-in-controversy is met) by the number of class members located in the state where the action is filed and the citizenship of the defendants. Although more than 2/3 of the class members are located in the state of California, the provision of CAFA which requires a court to decline jurisdiction does not apply here because neither of the primary defendants (i.e., Random House and Frey) are citizens of the state of California. *See* 28 U.S.C. § 1332(d)(4). Even if one of the defendants in this action were a resident of California, the Court still could not decline jurisdiction because, prior to the filing of this action, a class action alleging the same or similar factual allegations was brought against defendants Random House and Frey.

See More v. Frey, et al., No. 06 CH 00772, Circuit Court of Cook County, Illinois (January 12, 2006); 28 U.S.C. § 1332(d)(3)(A)(ii).[3]

Procedural Matters

14. Removal is Timely. A notice of removal may be filed within 30 days after the defendant receives a copy of the initial pleading, motion, or other paper from which it may be ascertained that the case is removable. 28 U.S.C. § 1446(b). The United States Supreme Court has held that the 30-day period prescribed in section 1446(b) runs from the date of formal service of the complaint. *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 355-56 (1999). Here, Random House was served on February 6, 2006. This notice of removal is thus timely, as the 30-day period for removal does not expire until March 9, 2006.

15. Removal to Proper Court. This Court is part of the "district and division embracing the place where" the State Court Action was filed – Los Angeles County, California. 28 U.S.C. § 1446(a).

16. Consent Not Required. Pursuant to 28 U.S.C. § 1453(b), the consent of other defendants to this removal is not required.

17. Pleadings and Process. Pursuant to 28 U.S.C. § 1446(a), attached hereto as Exhibit B is "a copy of all process, pleadings, and orders served upon" defendant Random House. Defendant has not answered or otherwise filed a responsive pleading to the Complaint.

18. Filing and Service. A copy of this Notice of Removal is being filed with the Clerk of the Superior Court of the State of California for the County of Los Angeles, and is being served on all counsel of record, consistent with 28 U.S.C. § 1446(d). The Superior Court of the State of California for the County of Los Angeles is located within this district.

[3] The *More* case has been removed and is currently pending before the United States District Court for the Northern District of Illinois, Eastern Division.

WHEREFORE, defendant Random House, Inc., respectfully removes this action, now pending in the Superior Court of the State of California for the County of Los Angeles to the United States District Court for the Central District of California.

Dated: February 21, 2006

Respectfully submitted,

SIDLEY AUSTIN LLP

By: [signature]

Jennifer A. Ratner
Attorneys For Defendant
Random House, Inc.

EXHIBIT A

DECLARATION OF DONALD WEISBERG

Pursuant to 28 U.S.C. § 1746, Donald Weisberg declares and states as follows:

1. My name is Donald Weisberg. I am over the age of 21 and am competent to testify as to the statements set forth in this declaration.

2. I am currently the Executive-Vice President and Chief Operating Officer, North America of Random House, Inc. ("Random House"), a position I have held since November 2001. In my position, I am familiar with sales figures for books published by Random House and its related corporate entities.

3. I am familiar with the book "A Million Little Pieces," by James Frey. In 2003, "A Million Little Pieces" was published in hardcover by Nan A. Talese, an imprint of Doubleday, a division of Random House. In 2005, "A Million Little Pieces" was published in paperback by Anchor Books, a division of Random House.

4. The suggested retail price of the hardcover edition of the book was $22.95. The suggested retail price for the paperback edition of the book was $14.95.

5. I have reviewed sales figures for "A Million Little Pieces" maintained by Random House in the normal and ordinary course of its business. I have also reviewed retail "point of sales" data provided by certain third-parties. Based on this data, I estimate that as of January 7, 2006: (1) more than 350,000 copies of the paperback edition of "A Million Little Pieces" were sold to consumers in California; and (2) more than 26,000 copies of the hardcover edition of "A Million Little Pieces" were sold to consumers in California.

6. Based on this sales data and the suggested retail prices listed above, the total amount of sales to consumers in California of "A Million Little Pieces" exceeds $5,000,000.

I declare under penalty of perjury that the forgoing is true and correct.

Executed on February 16, 2006 at NEW YORK, NEW YORK.

Donald Weisberg

EXHIBIT B

D-324

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED
LOS ANGELES SUPERIOR COURT

JAN 1 2 2006

JOHN A. CLARKE, EXECUTIVE OFFICER/CLERK
BY D. GILES, DEPUTY

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
JAMES FREY, RANDOM HOUSE, INC. and Does 1-300

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
SARA RUBENSTEIN, Individually and on Behalf of All Others Similarly Situated

You have 30 **CALENDAR DAYS** after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):
Los Angeles Superior Court Of California - Central District
111 N. Hill Street
Los Angeles, CA 90012

CASE NUMBER:
(Número del Caso): BC345856

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Ambor S. Healy, Kalcheim | SALAH, 2049 Century Park East, Suite 3150, Los Angeles, CA 90067, T: (310) 461-1200

DATE: *(Fecha)* JAN 1 2 2006 John A. Clarke Clerk, by *(Secretario)* DEBRAH GILES, Deputy *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☑ on behalf of (specify): Random House, Inc.
under: ☑ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

Page 1 of 1

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. January 1, 2004]

SUMMONS

Code of Civil Procedure §§ 412.20, 465

SUM-100

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

JAN 1 2 2006

John A. Clarke, Executive Officer/Clerk
By ______________, Deputy
D. GILES

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
JAMES FREY, RANDOM HOUSE, INC. and Does 1-300

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
SARA RUBENSTEIN, Individually and on Behalf of All Others Similarly Situated

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There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

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The name and address of the court is:
(El nombre y dirección de la corte es):
Los Angeles Superior Court Of California - Central District
111 N. Hill Street
Los Angeles, CA 90012

CASE NUMBER: *(Número del Caso):* BC345856

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Amber S. Healy, Kalcheim | SALAH, 2049 Century Park East, Suite 2150, Los Angeles, CA 90067. T (310) 461-1200

DATE: *(Fecha)* John A. Clarke Clerk, by *(Secretario)* DERRIAN GILES, Deputy *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]
JAN 1 2 2006

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify)*:
3. ☑ on behalf of *(specify)*:
under: ☑ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other *(specify)*:
4. ☐ by personal delivery on *(date)*:

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. January 1, 2004]

SUMMONS

Code of Civil Procedure §§ 412.20, 465

?-?-2006 15:34 P.05

NOTICE OF CASE ASSIGNMENT
LOS ANGELES SUPERIOR COURT

CASE NUMBER BC345856

THIS FORM IS TO BE SERVED WITH THE SUMMONS AND COMPLAINT

Your case is assigned for all purposes to the judicial officer indicated below. There is additional information on the reverse side of this form.

	ASSIGNED JUDGE	DEPT	ROOM	ASSIGNED JUDGE	DEPT	ROOM	
	Hon. Gregory Alarcon	36	410	Hon. William Highberger	32	406	
	Hon. Alice E. Altoon	28	318	Hon. Ernest Hiroshige	54	512	
	Hon. Conrad Aragon	49	509	Hon. Jane Johnson	56	514	
	Hon. Helen I. Bendix	18	308	Hon. Morris B. Jones	48	506	
	Hon. Bihu M. Berle	42	416	Hon. Malcolm H. Mackey	55	515	
	Hon. Tricia Ann Bigelow	23	315	Hon. Jon M. Mayeda	72	731	
	Hon. Soussan Bruguera	71	729	Hon. Rita Miller	16	306	
	Hon. Susan Bryant-Deason	52	510	Hon. David L. Minning	61	632	
	Hon. James C. Chalfant	13	630	Hon. Aurelio Munoz	47	507	
✓	Hon. Victoria Chaney	324	CCW	Hon. Mary Ann Murphy	25	317	
	Hon. Judith C. Chirlin	69	532	Hon. Rodney E. Nelson	46	600	
	Hon. Ralph W. Dau	57	517	Hon. Joanne O'Donnell	37	413	
	Hon. Maureen Duffy-Lewis	38	412	Hon. Victor H. Person	39	415	
	Hon. James R. Dunn	26	316	Hon. Mel Recana	45	529	
	Hon. Lee Edmon	68	617	Hon. Andria K. Richey	31	407	
	Hon. William F. Fahey	78	730	Hon. Teresa Sanchez-Gordon	74	735	
	Hon. Irving Feffer	51	511	Hon. John P. Shook	53	513	
	Hon. Edward A. Ferns	69	621	Hon. Ronald M. Sohigian	41	417	
	Hon. Kenneth R. Freeman	64	601	Hon. Michael L. Stern	62	600	
	Hon. Haley J. Fromholz	20	310	Hon. Mary Thornton House	17	313	
	Hon. Richard Fruin	15	307	Hon. Rolf M. Treu	58	516	
	Hon. Terry Green	14	300	Hon. John Shepard Wiley, Jr	50	508	
	Hon. Elizabeth A. Grimes	30	400	Hon. David A. Workman	40	414	
	Hon. Paul Gutman	34	408	Hon. George Wu	33	409	
	Hon. Robert L. Hess	24	314		35	411	
		3	224	OTHER			

Given to Plaintiff of record on ____________________ John A. Clarke, Executive Officer/Clerk

____________________, DEPUTY CLERK

[illegible]
[illegible]Judge Assignments.wpd

???-03-2006 15:34 P.06

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Amber S. Healy [SBN # 232730]
2049 Century Park East, Suite 2150
Los Angeles, CA 90067
TELEPHONE NO.: (310) 461-1200 FAX NO.: (310) 461-1201
ATTORNEY FOR (Name): Sara Rubenstein

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles
STREET ADDRESS: 111 North Hill Street
MAILING ADDRESS: 111 North Hill Street
CITY AND ZIP CODE: Los Angeles, CA 90012
BRANCH NAME: Central

CASE NAME:
Rubenstein v. James Frey, et al.

FOR COURT USE ONLY

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

JAN 1 2 2006

John A. Clarke, Executive Officer/Clerk
By ____________, Deputy
D. GILES

CIVIL CASE COVER SHEET

[✓] Unlimited (Amount demanded exceeds $25,000) [ ] Limited (Amount demanded is $25,000 or less)

Complex Case Designation
[ ] Counter [ ] Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 1811)

CASE NUMBER: BC345956
JUDGE:
DEPT:

Items 1–6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort
- [ ] Auto (22)
- [ ] Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
- [ ] Asbestos (04)
- [ ] Product liability (24)
- [ ] Medical malpractice (45)
- [ ] Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort
- [✓] Business tort/unfair business practice (07)
- [ ] Civil rights (08)
- [ ] Defamation (13)
- [ ] Fraud (16)
- [ ] Intellectual property (19)
- [ ] Professional negligence (25)
- [ ] Other non-PI/PD/WD tort (35)

Employment
- [ ] Wrongful termination (36)
- [ ] Other employment (15)

Contract
- [ ] Breach of contract/warranty (06)
- [ ] Collections (09)
- [ ] Insurance coverage (18)
- [ ] Other contract (37)

Real Property
- [ ] Eminent domain/Inverse condemnation (14)
- [ ] Wrongful eviction (33)
- [ ] Other real property (26)

Unlawful Detainer
- [ ] Commercial (31)
- [ ] Residential (32)
- [ ] Drugs (38)

Judicial Review
- [ ] Asset forfeiture (05)
- [ ] Petition re: arbitration award (11)
- [ ] Writ of mandate (02)
- [ ] Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 1800–1812)
- [ ] Antitrust/Trade regulation (03)
- [ ] Construction defect (10)
- [ ] Mass tort (40)
- [ ] Securities litigation (28)
- [ ] Environmental/Toxic tort (30)
- [ ] Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment
- [ ] Enforcement of judgment (20)

Miscellaneous Civil Complaint
- [ ] RICO (27)
- [ ] Other complaint (not specified above) (42)

Miscellaneous Civil Petition
- [ ] Partnership and corporate governance (21)
- [ ] Other petition (not specified above) (43)

2. This case [✓] is [ ] is not complex under rule 1800 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
   a. [✓] Large number of separately represented parties
   b. [✓] Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
   c. [✓] Substantial amount of documentary evidence
   d. [✓] Large number of witnesses
   e. [ ] Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
   f. [✓] Substantial postjudgment judicial supervision
3. Type of remedies sought *(check all that apply)*:
   a. [✓] monetary b. [✓] nonmonetary; declaratory or injunctive relief c. [ ] punitive
4. Number of causes of action (specify): three
5. This case [✓] is [ ] is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. *(You may use form CM-015.)*

Date: 1/12/06
Amber S. Healy
(TYPE OR PRINT NAME) ▶ (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE
- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 201.8.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 1800 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

American LegalNet, Inc.
www.USCourtForms.com

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers

If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 5 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. You do not need to submit a cover sheet with amended papers. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 201.8(c) and 227 of the California Rules of Court.

To Parties in Complex Cases

In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 1800 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort
- Auto (22)–Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
- Asbestos (04)
  - Asbestos Property Damage
  - Asbestos Personal Injury/Wrongful Death
- Product Liability (*not asbestos or toxic/environmental*) (24)
- Medical Malpractice (45)
  - Medical Malpractice–Physicians & Surgeons
  - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
  - Premises Liability (e.g., slip and fall)
  - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
  - Intentional Infliction of Emotional Distress
  - Negligent Infliction of Emotional Distress
  - Other PI/PD/WD

Non-PI/PD/WD (Other) Tort
- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
  - Legal Malpractice
  - Other Professional Malpractice (*not medical or legal*)
- Other Non-PI/PD/WD Tort (35)

Employment
- Wrongful Termination (36)
- Other Employment (15)

Contract
- Breach of Contract/Warranty (06)
  - Breach of Rental/Lease
    - Contract (*not unlawful detainer or wrongful eviction*)
  - Contract/Warranty Breach–Seller Plaintiff (*not fraud or negligence*)
  - Negligent Breach of Contract/Warranty
  - Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
  - Collection Case–Seller Plaintiff
  - Other Promissory Note/Collections Case
- Insurance Coverage (*not provisionally complex*) (18)
  - Auto Subrogation
  - Other Coverage
- Other Contract (37)
  - Contractual Fraud
  - Other Contract Dispute

Real Property
- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
  - Writ of Possession of Real Property
  - Mortgage Foreclosure
  - Quiet Title
  - Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer
- Commercial (31)
- Residential (32)
- Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review
- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
  - Writ–Administrative Mandamus
  - Writ–Mandamus on Limited Court Case Matter
  - Writ–Other Limited Court Case Review
- Other Judicial Review (39)
  - Review of Health Officer Order
  - Notice of Appeal–Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 1800–1812)
- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment
- Enforcement of Judgment (20)
  - Abstract of Judgment (Out of County)
  - Confession of Judgment (*non-domestic relations*)
  - Sister State Judgment
  - Administrative Agency Award (*not unpaid taxes*)
  - Petition/Certification of Entry of Judgment on Unpaid Taxes
  - Other Enforcement of Judgment Case

Miscellaneous Civil Complaint
- RICO (27)
- Other Complaint (*not specified above*) (42)
  - Declaratory Relief Only
  - Injunctive Relief Only (*non-harassment*)
  - Mechanics Lien
  - Other Commercial Complaint Case (*non-tort/non-complex*)
  - Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition
- Partnership and Corporate Governance (21)
- Other Petition (*not specified above*) (43)
  - Civil Harassment
  - Workplace Violence
  - Elder/Dependent Adult Abuse
  - Election Contest
  - Petition for Name Change
  - Petition for Relief from Late Claim
  - Other Civil Petition

SHORT TITLE: Rubenstein v. James Frey, et al.	CASE NUMBER

CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)

This form is required pursuant to LASC Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? ☑ YES CLASS ACTION? ☑ YES LIMITED CASE? ☐ YES TIME ESTIMATED FOR TRIAL 150 ☐ HOURS/ ☑ DAYS

Item II. Select the correct district and courthouse location (4 steps – If you checked "Limited Case", skip to Item III, Pg. 4).

Step 1: After first completing the Civil Case Cover Sheet Form, find the main civil case cover sheet heading for your case in the left margin below, and, to the right in Column A, the Civil Case Cover Sheet case type you selected.

Step 2: Check one Superior Court type of action in Column B below which best describes the nature of this case.

Step 3: In Column C, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Los Angeles Superior Court Local Rule 2.0.

Applicable Reasons for Choosing Courthouse Location (see Column C below)

1. Class Actions must be filed in the County Courthouse, Central District.
2. May be filed in Central (Other county, or no Bodily Injury/Property Damage).
3. Location where cause of action arose.
4. Location where bodily injury, death or damage occurred.
5. Location where performance required or defendant resides.
6. Location of property or permanently garaged vehicle.
7. Location where petitioner resides.
8. Location wherein defendant/respondent functions wholly.
9. Location where one or more of the parties reside.
10. Location of Labor Commissioner Office.

Step 4: Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto Tort	Auto (22)	☐ A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Uninsured Motorist (46)	☐ A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1., 2., 4.
Other Personal Injury/Property Damage/Wrongful Death Tort	Asbestos (04)	☐ A6070 Asbestos Property Damage ☐ A7221 Asbestos - Personal Injury/Wrongful Death	2. 2.
	Product Liability (24)	☐ A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
	Medical Malpractice (45)	☐ A7210 Medical Malpractice - Physicians & Surgeons ☐ A7240 Other Professional Health Care Malpractice	1., 2., 4. 1., 2., 4.
	Other Personal Injury Property Damage Wrongful Death (23)	☐ A7250 Premises Liability (e.g., slip and fall) ☐ A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.) ☐ A7270 Intentional Infliction of Emotional Distress ☐ A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 2., 4. 1., 2., 4. 1., 2., 3. 1., 2., 4.
Non-Personal Injury/Property Damage/Wrongful Death Tort	Business Tort (07)	☑ A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 2., 3.
	Civil Rights (08)	☐ A6005 Civil Rights/Discrimination	1., 2., 3.
	Defamation (13)	☐ A6010 Defamation (slander/libel)	1., 2., 3.
	Fraud (16)	☐ A6013 Fraud (no contract)	1., 2., 3.
	Intellectual Property (19)	☐ A6016 Intellectual Property	2., 3.

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SHORT TITLE: Rubenstein v. James Troy, et al	CASE NUMBER

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons -See Step 3 Above
Nonpersonal Injury/Property Damage/ Wrongful Death Tort (Cont'd)	Professional Negligence (25)	☐ A6017 Legal Malpractice	1., 2., 3.
		☐ A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3.
	Other (35)	☐ A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
Employment	Wrongful Termination (36)	☐ A6037 Wrongful Termination	1., 2., 3.
	Other Employment (15)	☐ A6024 Other Employment Complaint Case	1., 2., 3.
		☐ A6109 Labor Commissioner Appeals	10.
Contract	Breach of Contract/ Warranty (06) (not insurance)	☐ A6004 Breach of Rental/Lease Contract (not Unlawful Detainer or wrongful eviction)	2., 5.
		☐ A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence)	2., 5.
		☐ A6019 Negligent Breach of Contract/Warranty (no fraud)	1., 2., 5.
		☐ A6028 Other Breach of Contract/Warranty (not fraud or negligence)	1., 2., 5.
	Collections (09)	☐ A6002 Collections Case-Seller Plaintiff	2., 5., 6.
		☐ A6012 Other Promissory Note/Collections Case	2., 5.
	Insurance Coverage (18)	☐ A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
	Other Contract (37)	☐ A6009 Contractual Fraud	1., 2., 3., 5.
		☐ A6031 Tortious Interference	1., 2., 3., 5.
		☐ A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 8.
Real Property	Eminent Domain/Inverse Condemnation (14)	☐ A7300 Eminent Domain/Condemnation Number of parcels______	2.
	Wrongful Eviction (33)	☐ A6023 Wrongful Eviction Case	2., 6.
	Other Real Property (26)	☐ A6018 Mortgage Foreclosure	2., 6.
		☐ A6032 Quiet Title	2., 6.
		☐ A6060 Other Real Property(not eminent domain, landlord/tenant, foreclosure)	2., 6.
Unlawful Detainer	Unlawful Detainer-Commercial (31)	☐ A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
	Unlawful Detainer-Residential (32)	☐ A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
	Unlawful Detainer-Drugs (38)	☐ A6022 Unlawful Detainer-Drugs	2., 6.
Judicial Review	Asset Forfeiture (05)	☐ A6108 Asset Forfeiture Case	2., 6.
	Petition re Arbitration (11)	☐ A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.

SHORT TITLE:	CASE NUMBER
Rubenstein v. James Frey, et al.	

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Judicial Review (Cont'd.)	Writ of Mandate (02)	☐ A6151 Writ - Administrative Mandamus	2., 8
		☐ A6152 Writ - Mandamus on Limited Court Case Matter	2.
		☐ A6153 Writ - Other Limited Court Case Review	2.
	Other Judicial Review (39)	☐ A6150 Other Writ /Judicial Review	2., 8.
Provisionally Complex Litigation	Antitrust/Trade Regulation (03)	☐ A6003 Antitrust/Trade Regulation	1., 2., 8.
	Construction Defect (10)	☐ A6007 Construction defect	1., 2., 3.
	Claims Involving Mass Tort (40)	☐ A6006 Claims Involving Mass Tort	1., 2., 8.
	Securities Litigation (28)	☐ A6035 Securities Litigation Case	1., 2., 8.
	Toxic Tort Environmental (30)	☐ A6036 Toxic Tort/Environmental	1., 2., 3., 8.
	Insurance Coverage Claims from Complex Case (41)	☐ A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8
Enforcement of Judgment	Enforcement of Judgment (20)	☐ A6141 Sister State Judgment	2., 9.
		☐ A6160 Abstract of Judgment	2., 6.
		☐ A6107 Confession of Judgment (non-domestic relations)	2., 9.
		☐ A6140 Administrative Agency Award (not unpaid taxes)	2., 8.
		☐ A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax	2., 8.
		☐ A6112 Other Enforcement of Judgment Case	2., 8., 9.
Miscellaneous Civil Complaints	RICO (27)	☐ A6033 Racketeering (RICO) Case	1., 2., 8.
	Other Complaints (Not Specified Above) (42)	☐ A6030 Declaratory Relief Only	1., 2., 8.
		☐ A6040 Injunctive Relief Only (not domestic/harassment)	2., 8.
		☐ A6011 Other Commercial Complaint Case (non-tort/non-complex)	1., 2., 8.
		☐ A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8.
Miscellaneous Civil Petitions	Partnership Corporation Governance(21)	☐ A6113 Partnership and Corporate Governance Case	2., 8.
	Other Petitions (Not Specified Above) (43)	☐ A6121 Civil Harassment	2., 3., 9.
		☐ A6123 Workplace Harassment	2., 3., 9.
		☐ A6124 Elder/Dependent Adult Abuse Case	2., 3., 9.
		☐ A6190 Election Contest	2
		☐ A6110 Petition for Change of Name	2., 7.
		☐ A6170 Petition for Relief from Late Claim Law	2., 3., 4., 8.
		☐ A6100 Other Civil Petition	2., 9

SHORT TITLE: Rubenstein v. James Frey, et al.	CASE NUMBER

Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

REASON: CHECK THE NUMBER UNDER COLUMN C WHICH APPLIES IN THIS CASE ☑1. ☑2. ☑3. ☐4. ☐5. ☐6. ☐7. ☐8. ☐9. ☐10.			ADDRESS: 111 North Hill Street
CITY: Los Angeles	STATE: CA	ZIP CODE: 90012	

Item IV. *Declaration of Assignment*: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the Stanley Mosk courthouse in the Central District of the Los Angeles Superior Court (Code Civ. Proc., § 392 et seq., and LASC Local Rule 2.0, subds. (b), (c) and (d)).

Dated: January 12, 2006

(SIGNATURE OF ATTORNEY/FILING PARTY)

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet form JC 982.2(b)(1).
4. Complete Addendum to Civil Case Cover Sheet form CIV 109 __________ (eff. Date).
5. Payment in full of the filing fee, unless fees have been waived.
6. Signed order appointing the Guardian ad Litem, JC form 982(a)(27), if the plaintiff or petitioner is a minor under 18 years of age, or if required by Court.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

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CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

JAN 1 2 2006

John A. Clarke, Executive Officer/Clerk
By ________________, Deputy
D. GILES

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

SARA RUBENSTEIN, Individually and on Behalf of All Others Similarly Situated,

Plaintiff,

vs.

JAMES FREY, RANDOM HOUSE, INC. and Does 1-300

Defendants.

Case No. BC345856

CLASS ACTION COMPLAINT FOR:

1. Violation of the Consumers Legal Remedies Act, Civ. Code §1750 et seq.,

2. Violation of the Unfair Competition Law, Bus. & Prof. Code §17200 et seq.;

3. Violation of the False Advertising Statute, Bus. & Prof. Code §17500 et seq.

Plaintiff Sara Rubenstein, by counsel and for her Class Action Complaint ("Complaint") against Defendants, James Frey and Random House, Inc, and Does 1 through 300, hereby allege upon personal knowledge as to her own acts, and upon information and belief (based on the investigation of her counsel) as to all other matters, as to which allegations they believe substantial evidentiary support will exist after a reasonable opportunity for further investigation and discovery, as follows:

aware that they have been duped by Defendants.

8. Due to Defendants' scheme, and consumers inability to determino the truth as to the falsity of Defendants' claims and representations regarding the book, Plaintiff and Class members were fraudulently induced to purchase the Book.

9. California's consumer protection laws are designed to protect consumers from this type of false advertising and predatory conduct at issue in this action. Defendants' unfair and deceptive course of conduct is common to all purchasers of "A Million Little Pieces."

10. Defendants' scheme to deceive and defraud consumers violated (a) the Consumers Legal Remedies Act ("CLRA"), Civ. Code §1750 et seq., specifically Civ. Code §1770(a) (5) and (b); the Unfair Competition Law, Bus. & Prof. Code §17200 et seq.; including the False Advertising Statute, Bus. & Prof. Code §17500 et seq. ("UCL")

11. Consequently, by this Complaint and on behalf of the consumers of the Book, Plaintiff and members of the Class she seeks restitution to compensate them for their monetary losses, disgorgement of all of the Defendants' wrongfully earned profits and other gains from their scheme.

12. Pursuant to the CLRA on January 12, 2006, Plaintiff gave notice to Defendants of her intention to file an action for monetary damages under *California Civil Code* § 1750 et seq. unless Defendant correct, repair, replace, or otherwise rectify the consumer fraud resulting from its conduct.

II. PARTIES

13. Plaintiff, Sara Rubenstein, is an individual who resides in the County of Los Angeles. Plaintiff is a consumer who bought and read the Book during the summer of 2005.

14. Plaintiff made her purchase in reliance upon Defendants' deceptive, fraudulent and false representations that the Book was a non-fiction literary work. Plaintiff would not have purchased the Book had Defendants truthfully disclosed that many of the events portrayed in the Book were fiction. Plaintiff seeks relief in her individual capacity and she seeks to represent a Class consisting of all other consumers who purchased the Book from its publication in 2003 to

January 10, 2006, the date when it was first publicly disclosed that many of the events within the Book were fictional or wildly exaggerated.

15. Defendant James Frey, is the author of "A Million Little Pieces." During the Class Period, Defendant Frey conducted the illegal scheme complained of in the County of Los Angeles.

16. Defendant Random House is the publisher of the Book. Defendant Random House did business throughout the County of Los Angeles, the State of California. During the Class Period, Defendant Random House conducted the illegal scheme complained of here in the County of Los Angeles.

17. The true names and capacities (whether individual, corporate, associate, or otherwise) of the Defendants that are identified as Does 1 through 300, inclusive, and each of them, are unknown to Plaintiff, who therefor sue said "Doe" Defendants by such fictitious names. Plaintiff is informed and believe and thereon allege that each of the Defendants fictitiously named herein as "Doe" is legally responsible in some actionable manner for the events and happenings hereinafter described, and thereby proximately caused the injuries and damages to Plaintiffs and Class members, as alleged herein. Plaintiffs will seek leave of Court to amend this Complaint to state the true names and capacities of said fictitiously named Defendants when the same have been ascertained.

18. Plaintiff is informed and believe and thereon allege that Defendants (and each of them), including Does 1 through 300, inclusive, were the agents, servants, employees, successors, assignees, transferees and/or joint venturers of their co-Defendants, and each of them was, as such, acting within the course, scope and authority of said agency, employment and/or joint venture and was acting with the consent, permission and authorization of each of the remaining Defendants, and that each and every Defendant when acting as a principal, was negligent in the selection and hiring of each and every other Defendant as an agent, employee and/or joint venturer. All actions of each Defendant, as alleged herein were ratified and approved by every other Defendant or their officers or managing agents.

III. JURISDICTION AND VENUE

19. This Court has subject matter jurisdiction over this class action pursuant to Bus. & Prof. Code §§ 17203, 17204 and 17535, and Civ. Code § 1780. This Court may properly exercise personal jurisdiction over the parties because (a) Plaintiffs and the members of the Class submit to the jurisdiction of this Court; (b) Defendant Frey systematically and continuously does business in this County; and (c) Defendant Random House systematically and continually does business in the County of Los Angeles.

20. Venue is proper in this Court pursuant to Bus. & Prof. Code §§ 17204 and 17535, Civ. Code §§ 395 and 395.5, and Civ. Code § 1780(c) because Plaintiff resides in the County of Los Angeles and Defendants systematically and continually do business in this County.

21. Federal subject matter jurisdiction does not exist over the claims for relief asserted in this Complaint.

IV. CLASS ACTION ALLEGATIONS

22. This action may properly be maintained as a Class Action pursuant to Code Civ. Proc. § 382, Civ. Code §§ 1752, 1780 and 1781, and Rules 1850-1861 of the Rules of Court.

23. Plaintiff brings this action as a Class Action on behalf of all purchasers of the Book who reside in California or who purchased the Book in California during the Class Period.

24. The Class is composed of thousands of residents of Californians including Plaintiff, and joinder of everyone is impracticable. Although the exact number of Class members is presently unknown, the Class will number in at least thousands. During the Class Period, the Book was sold throughout the State of California in bookstores, supermarkets and convenience stores, as well as by retailers on the Internet. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of the claims of Plaintiffs and other Class members in this action will provide substantial benefits to the parties and this Court.

25. There exists a well-defined community of interest in the questions of law and fact presented by this controversy. These questions of law and fact common to Plaintiffs and Class

members predominate over questions which may affect only individual members, if any, because Defendants have acted on grounds generally applicable to the entire Class. Among the questions of law and fact common to the Class are the following:

(a) Whether Defendants' scheme to utilize false and deceptive statements violates the CLRA, the UCL and Section 17500;

(b) Whether Defendants made false claims regarding the Book;

(c) Whether Defendants' misrepresentations were false and misleading advertising; and

(d) The amount of restitution that Plaintiffs and members of the Class should be awarded.

26. Plaintiff is a member of the Class. Plaintiff's claims are typical of the claims of the other Class members because Plaintiff and all Class members were injured by the same wrongful acts and practices in which Defendants engaged as alleged herein.

27. Plaintiff will fairly and adequately protect the interests of the Class. The interests of Plaintiff are coincident with, and not antagonistic to, those of the Class members. In addition, Plaintiff has retained attorneys who are experienced and competent in the prosecution of complex and class litigation. Neither Plaintiff nor their attorneys have any conflict in undertaking this representation.

28. A class action is superior to the alternatives, if any, for the fair and efficient adjudication of the controversy alleged herein because such treatment will permit a large number of similarly situated persons residing throughout California to prosecute their common claims in a single forum simultaneously, efficiently, and without duplication of evidence, effort, and expense that numerous individual actions would engender. This action will result in the orderly and expeditious administration of Class claims. Uniformity of decisions will be assured, thereby avoiding the risk of inconsistent and varying determinations.

29. Because the injuries suffered by individual Class members or the amount of restitution or disgorgement to each class member may be relatively small, the expense and burden of individual litigation make it virtually impossible for the members of the Class effectively to seek redress individually for Defendants' alleged wrongful conduct.

30. Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action.

31. Common questions of law and fact predominate in this case, and a class action is the only appropriate method for the complete adjudication of this controversy for the following reasons, among others:

(a) The individual amounts of restitution involved, while not insubstantial, are generally so small that individual actions or other individual remedies are impracticable and litigating individual actions would be too costly;

(b) The costs of individual suits would unreasonably consume the amounts that would be recovered;

(c) Individual actions would create a risk of inconsistent results and would be unnecessary and duplicative of this litigation; and

(d) Individual actions would unnecessarily burden the courts and waste precious judicial resources.

31. Notice to the members of the Class may be accomplished cheaply, efficiently and in a manner best designed to protect the rights of all Class members.

DEFENDANTS' SCHEME TO DEFRAUD CONSUMERS

32. Defendants have represented, expressly or by implication, including through advertisements disseminated throughout the County of Los Angeles, the State of California and the United States that "A Million Little Pieces" is a non-fiction literary work, and a "genuine account" when in fact many of the key accounts within the Book are wholly fabricated or wildly embellished. For example, in relation to a driving while intoxicated arrest Defendant Frey writes, "Got first DUI. Blew a .36, and set a County Record. Went to Jail for a week." However, the police report from the incident tells a different story. Just after midnight on June 8, 1988, after executing a traffic stop, in which Frey was the driver, the officer noticed Frey's eyes were glassy, and he "appeared dazed." After failing a series of field sobriety tests, Frey was arrested for drunk driving and for failure to carry his driver's license. He was transported to the Sheriff's

Office, where he agreed to undergo a Breathalyzer test. Though he would write of setting a .36 county record, Frey's blood alcohol level was actually recorded in successive tests at .21 and .20 As for his claim to have spent a week in jail after the arrest, the report debunks that assertion. After Frey's parents were called, he was allowed to quickly bond out. Two weeks later, court records show, he pleaded guilty to a reduced charge of reckless driving and was fined $305. Thus Frey never spent a week in jail nor established the "County record" to which the Book refers.

33. Moreover, Frey writes of another encounter with police authorities in which he was allegedly, hit with an imposing set of criminal charges, including: Assault with a Deadly Weapon (because Frey allegedly hit a policeman with a car), Assaulting an Officer of the Law (because Frey allegedly engaged the officers), Felony DUI, Disturbing the Peace, Resisting Arrest, Driving Without a License, Driving Without Insurance, Attempted Incitement of a Riot, Possession of a Narcotic with Intent to Distribute, and Felony Mayhem. As reflected in the Book, The only count Frey took issue with was the drug charge (for possession of a "bag of crack cocaine"): "That was bullshit because I intended to use it, not distribute it."

34. However, indices at the County Common Pleas Court contained no records for Frey. At the county's Municipal Court, where misdemeanor and traffic cases are adjudicated, only a single matter turned up, a November 1990 traffic ticket for speeding and driving without a seat belt. According to county records, Frey paid a small fine and the case was closed out.

35. Thus, contrary to Frey's account in the Book there was no patrolman struck with a car, no swings at police officers, no mayhem, no attempt to incite a riot, and no crack. As a result there was no Charges for Assault with a Deadly Weapon, Charge for Assaulting an Officer of the Law, Charge for Felony DUI, Charge for Disturbing the Peace, Charge for Resisting Arrest, Charge for Driving Without Insurance, Charge for Attempted Incitement of a Riot, Charge for Possession of a Narcotic with Intent to Distribute, or Charge for Felony Mayhem.

36. Thus, Defendants had no credible basis for making the claims and representations, and many similar false and misleading statements within the Book and during the campaign to

sell the Book.

37. Similarly, while marketing the Book Frey told Oprah Winfrey and her audience of millions that "[i]f I was gonna write a book that was true, and I was gonna write a book that was honest, then I was gonna have to write about myself in very, very negative ways." "I think I wrote about the events in the book truly and honestly and accurately." And Frey has repeatedly asserted in press interviews that the book is "all true." In fact, however, many of the facts set forth in the Book were false and misleading.

38. Defendants have marketed the Book to consumers in the County of Los Angeles, the State of California by propagating these false and misleading accounts through advertisements and other media in order to induce consumers to buy the Book.

FIRST CAUSE OF ACTION

(All Defendants; Violations of the UCL, Bus. & Prof. Code section 17200)

39. Plaintiff hereby incorporates by reference each of the preceding allegations as if fully set forth herein. This claim arises under the UCL, and is alleged against each of the Defendants.

40. Defendants' actions complained of herein constitute unfair trade practices that have the capacity to and do deceive consumers, in violation of the UCL.

41. All of the conduct alleged herein occurred and continues to occur in the ordinary course of Defendants' business. Defendants' wrongful conduct is part of a pattern or generalized course of conduct repeated on thousands of occasions daily. Thus, Defendants' conduct impacts the public interest.

42. Defendants also engage in unlawful business acts in violation of the UCL by violating state law including, but not limited to, Civil Code §§ 1572, 1709, 1710 and 1770(a)(5),(7) and (9), as well as Section 17500. Plaintiffs reserve the right to identify additional violations of California law committed by Defendants as further investigation and discovery warrants.

43. Plaintiff and the members of the Class were all directly and proximately injured by

Defendants' wrongful conduct. Plaintiff and the members of the Class purchased the Book which they would not have purchased had they been truthfully and fully informed of the facts.

44. As a direct and proximate result of the wrongful and illegal acts alleged in this Complaint, Defendants received and continue to hold ill-gotten gains belonging to Plaintiffs and the members of the Class. Plaintiffs and Class members request that this Court enter such orders or judgments as may be necessary to restore to any person in interest any money which may have been acquired by means of such unfair practices, as provided in Business & Professions Code § 17203 and Civil Code § 3345, and for such other relief and further relief as may be justified as set forth below.

SECOND CAUSE OF ACTION

(All Defendants; Violations of the CLRA)

45. Plaintiff hereby incorporates by reference each of the preceding allegations as if fully set forth herein. This claim arises under the Consumers Legal Remedies Act and is alleged against all Defendants.

46. Plaintiff was a "consumer," as that term is defined in Civ. Code § 1761(d).

47. The Book constituted "goods," as that term is defined in Civ. Code § 1761(a).

48. Defendants each constituted a "person," as that term is defined in Civ. Code § 1761(c).

49. Plaintiff's purchase of the Book constituted a "transaction," as that term is defined in Civ. Code § 1761(e).

50. The CLRA provides in relevant part that "[t]he following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful: (5) Representing that goods ... have ... approval, characteristics, uses, benefits ... which they do not have, (7) Representing that goods ... are of a particular standard, quality or grade ... if they are of another, (9) Advertising goods ... with intent not to sell them as advertised. Civ. Code

§ 1770(a)(5),(7) and (9).

51. Defendants made an continue to make uniform written representations that the Book is a piece of non-fiction. These representations, as set forth above, were false and/or misleading and were in violation of the CLRA.

52. Civ. Code § 1780(a)(2), permits any court of competent jurisdiction to enjoin practices that violate Civ. Code § 1770.

53. Plaintiff and the members of the Class are consumers under Civ. Code § 1761(d), and have all been directly and proximately damaged as a result of Defendants' use or employment of the above-referenced methods, acts or practices that are unlawful under Civ. Code § 1780(a). Plaintiffs are entitled to bring this action against Defendants and to recover or obtain relief, including (a) an order enjoining such methods, acts or practices, pursuant to Civ. Code 1780(a)(2).

54. In accordance with the requirements of Civ. Code §1782(a), counsel for Plaintiffs provided Defendants with written notice on January 12, 2006, of the allegations within this Complaint. Should Defendant fail to adequately respond to Plaintiff's demand to "correct, repair, replace, or otherwise rectify" the misrepresentations described above, within 30 days after receipt of the Civil Code §1782 notice, Plaintiff shall seek relief in the form of a claim for actual damages, punitive damages, attorneys' fees and costs and/or restitution. In addition, Plaintiff shall seek, pursuant to California Civil Code §1780(a)(20), an order enjoining the above-described wrongful acts and practices of Defendant, plus costs and attorneys' fees, and any other appropriate relief under Civil Code §1780.

THIRD CAUSE OF ACTION

(All Defendants; Violations of Bus. & Prof. Code Section 17500)

55. Plaintiff hereby incorporates by reference each of the preceding allegations as if fully set forth herein. This claim arises under Section 17500 and is alleged against all of the Defendants.

56. At all times relevant hereto, each Defendant was a "person," as that term is defined

in Bus. & Prof. Code § 17506.

57. Bus. & Prof. Code § 17500 provides that "[i]t is unlawful for any person, firm, corporation or association with intent ... to dispose of ... personal property ... to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, ... any statement ... which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading..."

58. Defendants represented that "A Million Little Pieces" was a non-fiction memoir detailing the life of Defendant Frey on the cover and in the text of the Book itself, advertisements, brochures, marketing materials, and in television interviews and at book signings.

59. During the Class Period Defendants did not disclose, conspicuously or otherwise, on any of these materials that such representations were untrue or misleading and that many of the accounts in the Book were exaggerated or false.

60. Defendants' act of untrue and misleading advertising present a continuing threat to members of the public because such advertisements induce consumers to purchase the Book.

61. As a result of the violations of California law described above, Defendants have been, and will be, unjustly enriched at the expense of Plaintiffs and the members of the Class. Specifically, Defendants have been unjustly enriched by receipt of hundreds of thousands, if not millions, of dollars in monies received from customers who purchased the Book which is advertised and/or otherwise marketed in this State and this County, and which is promoted and sold through advertising and marketing materials which materially misrepresent the quality, nature, origin and functions of the product.

62. Pursuant to Bus. & Prof. Code § 17535, Plaintiffs request that this Court make such orders or judgments as may be necessary to prevent the use or employment by Defendants of untrue and misleading advertisements, or which may be necessary to restore to Plaintiffs and the members of the Class any money which may have been acquired by Defendants by means of such untrue and misleading advertisements.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

A. An Order certifying that this action may be maintained on behalf of a Class, with Plaintiffs as Class Representatives, pursuant to Civ. Code § 1781, Code Civ. Proc. §§ 378 and 382, and Rule 1850 et seq.;

B. Order that all payments for the Book be returned to Plaintiffs and the members of the Class because Defendants procured them through unfair trade practices and in violation of state law;

C. Award to Plaintiffs and each member of the Class restitution;

D. Order that Defendants be enjoined from engaging in unfair and/or deceptive acts or practices, as set forth in this Complaint;

E. Order that Defendants be enjoined to publish notice of the truth regarding the Book;

F. Award Plaintiffs and the members of the Class the costs of suit and attorneys' fees; and

G. Award all other relief to which Plaintiffs and Class members may be entitled at law or in equity.

Respectfully submitted,
Kalcheim | S A L A H

Dated: January 12, 2006

Amber S. Healy
Attorneys for Plaintiff

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I, Rebecca Allemand, declare I am over the age of 18 years, and not a party to this action. My place of employment and business address is 555 West Fifth Street, Suite 4000, Los Angeles, California 90013-1010.

On February 21, 2006, I served copies of document(s) entitled:

- **NOTICE OF REMOVAL**

On the following individuals and entities, as addressed below, by the means indicated below:

Mitch Kalcheim, Esq.
Amber S. Healy, Esq.
KALCHEIM SALAH
2049 Century Park East, Suite 2150
Los Angeles, CA 90067

Counsel for Plaintiff SARA RUBENSTEIN, Individually and on Behalf of All Others Similarly Situated

☒ (VIA U.S. MAIL) I served the foregoing document by U.S. Mail, as follows: I placed true copies of the document in a sealed envelope addressed to each interested party as shown above. I placed each such envelope with postage thereon fully prepaid, for collection and mailing at Sidley Austin LLP, Los Angeles, California. Under that practice, the correspondence would be deposited in the United States Postal Service on that same day in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 21, 2006, at Los Angeles, California.

Rebecca Allemand

Rebecca Allemand

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SHERA PAGLINAWAN and STUART OSWALD individually and on behalf of all others similarly situated, Plaintiffs, vs. JAMES FREY and JANE DOE FREY, individually and the marital community comprised thereof; NAN A. TALESE/DOUBLEDAY a division of RANDOM HOUSE, INC. a New York corporation, Defendants.	No. CLASS ACTION COMPLAINT

Plaintiffs, Shera Paglinawan and Stuart Oswald, by their undersigned attorneys, bring this civil action for damages and declaratory relief on behalf of themselves and all others similarly situated against the above-named Defendants and complain and allege as follows:

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SEATTLE, WASHINGTON 98101
TELEPHONE (206) 398-1188

I. NATURE OF ACTION

1.1 Plaintiffs bring this action as a Class Action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased the novel A Million Little Pieces from a seller located in the State of Washington or who read the book and are residents of the State of Washington.

1.2 A Million Little Pieces was written by Mr. James Frey and published and distributed by Nan A. Talese/Doubleday, a subsidiary of Random House, Inc.

1.3 A Million Little Pieces was purportedly a memoir and was advertised and marketed as such by Nan A. Talese/Doubleday. The book was written in the first person and claimed to tell the true story of James Frey, chronicling Mr. Frey's struggles with crime, alcohol and drug addiction.

1.4 In reality, Mr. Frey fabricated large portions of A Million Little Pieces and Nan A. Talese/Doubleday was aware of these fabrications.

1.5 As a result of the Defendants' actions the Plaintiffs have suffered economic damage and emotional distress.

II. PARTIES

2.1 Plaintiff Shera Paglinawan has at all material times been a resident of Seattle, Washington.

2.2 Plaintiff Stuart Oswald has at all material times been a resident of Seattle, Washington.

2.3 Defendant James Frey is, upon information and belief, a resident of New York.

2.4 Defendant Nan Talese A. Talese/Doubleday is a business subsidiary of Random House, a New York corporation.

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III. JURISDICTION AND VENUE

3.1 Subject matter jurisdiction is proper under 28 U.S.C. § 1332(a)(1) because the Plaintiffs and Defendants are citizens of different states and the amount in controversy exceeds $75,000.00. This court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

3.2 Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(a) because the Defendants systematically and continuously sold their product within this district and Defendants transact business within this district.

IV. CLASS ACTION ALLEGATION

4.1 Plaintiffs bring this suit as a class action pursuant to Rules 23(a), (b)(1), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure, on behalf of themselves and a Plaintiff Class (the "Class") composed of all persons who purchased A Million Little Pieces by James Frey from a vendor in the State of Washington and on behalf of all residents of the State of Washington who have read A Million Little Pieces. Plaintiffs reserve the right to modify this class definition prior to moving for class certification.

4.2 This action has been brought and may be properly maintained as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure for the following reasons:

a. The Class is ascertainable and there is a well-defined community of interest among the members of the Class;

b. Membership in the Class is so numerous as to make it impractical to bring all Class members before the Court. The identity and exact number of Class members is unknown but is estimated to be at least in the thousands considering the fact that A Million Little

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Pieces has sold over 3.5 million copies. Plaintiffs believe that members of the Class can be identified through Nan A. Talese/Doubleday and Random House's sales records.

c. Plaintiffs' claims are typical of those of other Class members, all of whom have suffered harm due to Defendants' uniform course of conduct.

d. Plaintiffs are members of the Class.

e. There are numerous and substantial questions of law and fact common to all of the members of the Class which control this litigation and predominate over any individual issues pursuant to Rule 23(b)(3). The common issues include, but are not limited to, the following:

i. Does the Washington Consumer Protection Act Apply?

ii. Were Defendants' representations false?

iii. Were Defendants aware of the falsity of their representations?

iv. Was there a valid contract between the parties?

v. Were Plaintiffs and Class members damaged?

f. These and other questions of law or fact which are common to the members of the Class predominate over any questions affecting only individual members of the Class;

g. Plaintiffs will fairly and adequately protect the interests of the Class in that Plaintiffs have no interests that are antagonistic to other members of the Class and have retained counsel competent in the prosecution of class actions to represent themselves and the Class;

h. Without a class action, the Class will continue to suffer damage, Defendants' violations of the law or laws will continue without remedy, and Defendants will continue to enjoy the fruits and proceeds of their unlawful misconduct;

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i. Given (i) the substantive complexity of this litigation; (ii) the size of individual Class members' claims; and (iii) the limited resources of the Class members, few, if any, Class members could afford to seek legal redress individually for the wrongs Defendants have committed against them;

j. This action will foster an orderly and expeditious administration of Class claims, economies of time, effort and expense, and uniformity of decision;

k. Inferences and presumptions of materiality and reliance are available to obtain class-wide determinations of those elements within the Class claims, as are accepted methodologies for class-wide proof of damages; alternatively, upon adjudication of Defendants' common liability, the Court can efficiently determine the claims of the individual Class members;

l. This action presents no difficulty that would impede the Court's management of it as a class action, and a class action is the best (if not he only) available means by which members of the Class can seek legal redress for the harm caused them by Defendants.

m. In the absence of a class action, Defendants would be unjustly enriched because they would be able to retain the benefits and fruits of their wrongful conduct.

4.3 The Claims in this case are also properly certifiable under applicable law.

V. STATEMENT OF FACTS

5.1 In 2002 James Frey presented a manuscript to Nan Talese, a publisher at Nan A. Talese/Doubleday. This manuscript was in the form of a novel. This manuscript formed the basis of A Million Little Pieces.

5.2 Ms. Talese informed Mr. Frey that Nan A. Talese/Doubleday would publish the manuscript if he recast the novel as a memoir.

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5.3 In 2003 Nan A. Talese/Doubleday published A Million Little Pieces by James Frey. The book was purportedly a memoir and was advertised and marketed as such by Nan A. Talese/Doubleday. The book was written in the first person and claimed to tell the true story of James Frey, chronicling Mr. Frey's struggles with crime, alcohol and drug addiction.

5.4 *A Million Little Pieces has sold over 3.5 million copies to date.*

5.5 In 2004 Oprah Winfrey added A Million Little Pieces to her well known book club.

5.6 Investigations have revealed that Mr. Frey fabricated large portions of A Million Little Pieces.

5.7 Plaintiff, Shera Paglinawan, received A Million Little Pieces as a gift from her mother and began reading the book before news of the book's falsity was disseminated.

5.8 Plaintiff, Stuart Oswald, purchased A Million Little Pieces in King County and began reading the book before news of the book's falsity was disseminated.

5.9 As a result of the Defendants' actions the Plaintiffs and other Class members have suffered economic damage.

VI. CAUSES OF ACTION

A. Breach of Contract

6.1 Plaintiffs reallege all prior allegations as though fully stated herein.

6.2 Plaintiffs and Class members purchased and/or read A Million Little Pieces based on the Defendants' representations that it was a truthful memoir.

6.3 Defendants' representations were false and its sales of A Million Little Pieces constitute a breach of contract.

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6.4 As a result of the breach Plaintiffs and Class members suffered damages which may fairly and reasonably be considered as arising naturally from the breach or may reasonably be supposed to have been in the contemplation of the parties, at the time they made the contract, as the probable result of the breach of it.

B. Unjust Enrichment

6.5 Plaintiffs reallege all prior allegations as though fully stated herein.

6.6 Defendants were and continue to be unjustly enriched by their false representations as to the truthfulness of A Million Little Pieces in an amount to be proven at trial.

C. Negligent Misrepresentation

6.7 Plaintiffs reallege all prior allegations as though fully stated herein.

6.8 Defendants owed Plaintiffs and Class members a duty to exercise reasonable care in advertising the truthfulness of A Million Little Pieces.

6.9 Defendants provided false information to Plaintiffs and Class members relating to the truthfulness of A Million Little Pieces.

6.10 Defendants breached their duty to Plaintiffs and other Class members by failing to exercise reasonable care or competence in guaranteeing the truthfulness of A Million Little Pieces.

6.11 Plaintiffs and Class members reasonably relied on the information provided by Defendants regarding the truthfulness of A Million Little Pieces.

6.12 As a proximate cause of Defendants' false representations Plaintiffs and other Class members suffered damages in an amount to be proven at trial.

D. Intentional Misrepresentation (Deceit)

6.13 Plaintiffs reallege all prior allegations as though fully stated herein.

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6.14 Defendants made representations of fact regarding the truthfulness of A Million Little Pieces for the purpose of inducing Plaintiffs and other Class members to purchase and/or read the book.

6.15 Defendants knew or believed the representations referred to in the preceding paragraph were false.

6.16 Plaintiffs and other class members reasonably relied on Defendants' false representations.

6.17 As a result of Defendants' false representations Plaintiffs and other Class members suffered damages in an amount to be proven at trial.

E. Washington Consumer Protection Act Violation – RCW 19.86, *et seq.*

6.18 Plaintiffs reallege all prior allegations as though fully stated herein.

6.19 At all times relevant to this action Washington had in effect RCW Ch. 19.86 prohibiting unfair or deceptive acts or practices in the conduct of business.

6.20 Defendants' false claims regarding the truthfulness of A Million Little Pieces constituted unfair or deceptive acts or practices in the conduct of trade or commerce.

6.21 Defendants' acts or practices have the capacity to deceive a substantial portion of the public and to affect the public interest.

6.22 As a result of Defendants' unfair or deceptive acts or practices, Plaintiffs and other Class members suffered injuries in an amount to be proven at trial.

F. Declaratory Judgment

6.23 Plaintiffs reallege all prior allegations as though fully stated herein.

6.24 Plaintiffs and the Class, pursuant to Rule 57 of the Federal Rules of Civil Procedure and 18 U.S.C. § 2201(a), hereby seek a declaratory judgment that Defendants'

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conduct in misleading purchasers and readers of A Million Little Pieces violated the Washington Consumer Protection Act and breached their implied or express contract with purchasers and readers of the book.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and Class members request that the Court enter an order of judgment against Defendants including the following:

A. Certification of the action as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure with respect to Plaintiffs' claim for injunctive and declaratory relief, and Rule 23(b)(3) of the Federal Rules of Civil Procedure with respect to the claims for damages, and appointment of Plaintiffs as Class Representatives and their counsel of record as Class Counsel;

B. A declaration that Defendants violated the Washington Consumer Protection Act;

C. A declaration that Defendants breached their explicit of implicit contract with readers and purchasers of A Million Little Pieces.

D. Damages in the amount of monies paid for A Million Little Pieces.

E. Damages for the time spent by Plaintiffs and Class members reading A Million Little Pieces.

F. Actual damages (including all general, special, incidental, and consequential damages), statutory damages (including treble damages), and such other relief as provided by the statutes cited herein;

G. Prejudgment and post-judgment interest on such monetary relief;

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H. Equitable relief in the form of restitution and/or disgorgement of all unlawful or illegal profits received by Defendants as a result of the unfair, unlawful and/or deceptive conduct alleged herein;

I. Other appropriate injunctive relief;

J. The costs of bringing this suit, including reasonable attorneys' fees; and

K. Such other relief as this Court may deem just, equitable and proper.

DATED this 19th day of January, 2006.

MYERS & COMPANY, P.L.L.C.

Attorneys for Plaintiffs and Class members

By: /s/ Michael David Myers
Michael David Myers
WSBA No. 22486
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Telephone: (206) 398-1188
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E-mail: mmyers@myers-company.com

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Shera Paglinawan and Stuart Oswald, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff King County, WA

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Myers & Company, PLLC, 1809 7th Ave., Suite 700
Seattle, WA 98101; (206) 398-1188

DEFENDANTS

James Frey and Jane Doe Frey; Nan A. Talese/ Doubleday a division of Random House, Inc.

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated or Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☒ 2	Incorporated and Principal Place of Business In Another State	☐ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☒ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt. Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
U.S. Civil Statute: 28 U.S.C. 1332(a)(1); 28 U.S.C. 1367

Brief description of cause:
Breach of contract, negligent & intentional misrepresentation and Consumer Protection Act violation

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

JS 44 Reverse (Rev. 11/04)

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. ***Nature of Suit.*** *Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient* to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. **Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Donna M Jackson/WAWD/09/USCOURTS
01/20/2006 11:24 AM

To PaulaMcN@hotmail.com
cc Paula McNabb/WAWD/09/USCOURTS@USCOURTS
bcc
Subject Fw: Paglinawan, et al. v. Frey, et al.

Receipt # for case C06-0099RSM is: 320755. S/iss.

~dj
----- Forwarded by Donna M Jackson/WAWD/09/USCOURTS on 01/20/2006 11:23 AM -----

"Tianna Pak" <tpak@myers-company.com>
01/19/2006 04:32 PM

To <newcases.seattle@wawd.uscourts.gov>
cc
Subject Paglinawan, et al. v. Frey, et al.

Dear Clerk of the Court:

Attached please find the following:

1) Class Action Complaint;
2) Summons to Defendant Frey;
3) Summons to Defendant Random House, Inc.

We ask that you please file the same and let our office know if any filing fees are required. Thank you for your assistance in this matter.

Tianna J. Pak
Myers & Company, p.l.l.c.
1809 Seventh Avenue, Suite 700
Seattle, Washington 98101
Telephone (206) 398-1188
Facsimile (206) 400-1117

M&Co. *A Professional Limited Liability Company*

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2006.01.18.Class Action Complaint.Federal.pdf 2006.01.19.Summons.Frey.pdf 2006.01.19.Summons.Random House.pdf